

106TH CONGRESS
1ST SESSION

S. 702

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 1999

Mr. HARKIN (for himself, Mrs. BOXER, Mr. KERRY, Mr. LEAHY, Mr. INOUE, Mr. TORRICELLI, Mr. KENNEDY, Ms. MIKULSKI, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Fair Pay Act of 1999”.

6 (b) **REFERENCE.**—Except as provided in section 8,
7 whenever in this Act an amendment or repeal is expressed
8 in terms of an amendment to, or repeal of, a section or

1 other provision, the reference shall be considered to be
2 made to a section or other provision of the Fair Labor
3 Standards Act of 1938 (29 U.S.C. 201 et seq.).

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) Wage rate differentials exist between equiv-
7 alent jobs segregated by sex, race, and national ori-
8 gin in Government employment and in industries en-
9 gaged in commerce or in the production of goods for
10 commerce.

11 (2) The existence of such wage rate
12 differentials—

13 (A) depresses wages and living standards
14 for employees necessary for their health and ef-
15 ficiency;

16 (B) prevents the maximum utilization of
17 the available labor resources;

18 (C) tends to cause labor disputes, thereby
19 burdening, affecting, and obstructing com-
20 merce;

21 (D) burdens commerce and the free flow of
22 goods in commerce; and

23 (E) constitutes an unfair method of com-
24 petition.

1 (3) Discrimination in hiring and promotion has
2 played a role in maintaining a segregated work
3 force.

4 (4) Many women and people of color work in
5 occupations dominated by individuals of their same
6 sex, race, and national origin.

7 (5)(A) A General Accounting Office analysis of
8 wage rates in the civil service of the State of Wash-
9 ington found that in 1985 of the 44 jobs studied
10 that paid less than the average of all equivalent jobs,
11 approximately 39 percent were female-dominated
12 and approximately 16 percent were male dominated.

13 (B) A study of wage rates in Minnesota using
14 1990 Decennial Census data found that 75 percent
15 of the wage rate differential between white and non-
16 white workers was unexplained and may be a result
17 of discrimination.

18 (6) Section 6(d) of the Fair Labor Standards
19 Act of 1938 prohibits discrimination in compensa-
20 tion for “equal work” on the basis of sex.

21 (7) Title VII of the Civil Rights Act of 1964
22 prohibits discrimination in compensation because of
23 race, color, religion, national origin, and sex. The
24 Supreme Court, in its decision in County of Wash-
25 ington v. Gunther, 452 U.S. 161 (1981), held that

1 title VII's prohibition against discrimination in com-
 2 pensation also applies to jobs that do not constitute
 3 "equal work" as defined in section 6(d) of the Fair
 4 Labor Standards Act of 1938. Decisions of lower
 5 courts, however, have demonstrated that further
 6 clarification of existing legislation is necessary in
 7 order effectively to carry out the intent of Congress
 8 to implement the Supreme Court's holding in its
 9 Gunther decision.

10 (8) Artificial barriers to the elimination of dis-
 11 crimination in compensation based upon sex, race,
 12 and national origin continue to exist more than 3
 13 decades after the passage of section 6(d) of the Fair
 14 Labor Standards Act of 1938 and the Civil Rights
 15 Act of 1964. Elimination of such barriers would
 16 have positive effects, including—

17 (A) providing a solution to problems in the
 18 economy created by discrimination through
 19 wage rate differentials;

20 (B) substantially reducing the number of
 21 working women and people of color earning low
 22 wages, thereby reducing the dependence on pub-
 23 lic assistance; and

1 (C) promoting stable families by enabling
2 working family members to earn a fair rate of
3 pay.

4 **SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.**

5 (a) AMENDMENT.—Section 6 (29 U.S.C. 206) is
6 amended by adding at the end the following:

7 “(h)(1)(A)(i) Except as provided in clause (ii), no em-
8 ployer having employees subject to any provision of this
9 section shall discriminate, within any establishment in
10 which such employees are employed, between employees on
11 the basis of sex, race, or national origin by paying wages
12 to employees in such establishment in a job that is domi-
13 nated by employees of a particular sex, race, or national
14 origin at a rate less than the rate at which the employer
15 pays wages to employees in such establishment in another
16 job that is dominated by employees of the opposite sex
17 or of a different race or national origin, respectively, for
18 work on equivalent jobs.

19 “(ii) Nothing in clause (i) shall prohibit the payment
20 of different wage rates to employees where such payment
21 is made pursuant to—

22 “(I) a seniority system;

23 “(II) a merit system; or

24 “(III) a system that measures earnings by
25 quantity or quality of production.

1 “(iii) The Equal Employment Opportunity Commis-
2 sion shall issue guidelines specifying criteria for deter-
3 mining whether a job is dominated by employees of a par-
4 ticular sex, race, or national origin. Such guidelines shall
5 not include a list of such jobs.

6 “(B) An employer who is paying a wage rate differen-
7 tial in violation of subparagraph (A) shall not, in order
8 to comply with the provisions of such subparagraph, re-
9 duce the wage rate of any employee.

10 “(2) No labor organization or its agents representing
11 employees of an employer having employees subject to any
12 provision of this section shall cause or attempt to cause
13 such an employer to discriminate against an employee in
14 violation of paragraph (1)(A).

15 “(3) For purposes of administration and enforcement
16 of this subsection, any amounts owing to any employee
17 that have been withheld in violation of paragraph (1)(A)
18 shall be deemed to be unpaid minimum wages or unpaid
19 overtime compensation under this section or section 7.

20 “(4) As used in this subsection:

21 “(A) The term ‘labor organization’ means any
22 organization of any kind, or any agency or employee
23 representation committee or plan, in which employ-
24 ees participate and which exists for the purpose, in
25 whole or in part, of dealing with employers con-

cerning grievances, labor disputes, wages, rates of
pay, hours of employment, or conditions of work.

“(B) The term ‘equivalent jobs’ means jobs that
may be dissimilar, but whose requirements are
equivalent, when viewed as a composite of skills, ef-
fort, responsibility, and working conditions.”.

(b) CONFORMING AMENDMENT.—Section 13(a) (29
U.S.C. 213(a)) is amended in the matter before paragraph
(1) by striking “section 6(d)” and inserting “sections 6(d)
and 6(h)”.

SEC. 4. PROHIBITED ACTS.

Section 15(a) (29 U.S.C. 215(a)) is amended—

(1) by striking the period at the end of para-
graph (5) and inserting a semicolon; and

(2) by adding after paragraph (5) the following
new paragraphs:

“(6) to discriminate against any individual be-
cause such individual has opposed any act or prac-
tice made unlawful by section 6(h) or because such
individual made a charge, testified, assisted, or par-
ticipated in any manner in an investigation, pro-
ceeding, or hearing to enforce section 6(h); or

“(7) to discharge or in any other manner dis-
criminate against, coerce, intimidate, threaten, or
interfere with any employee or any other person be-

1 cause the employee inquired about, disclosed, com-
 2 pared, or otherwise discussed the employee’s wages
 3 or the wages of any other employee, or because the
 4 employee exercised, enjoyed, aided, or encouraged
 5 any other person to exercise or enjoy any right
 6 granted or protected by section 6(h).”.

7 **SEC. 5. REMEDIES.**

8 Section 16 (29 U.S.C. 216) is amended—

9 (1) by adding at the end the following:

10 “(f) In any action brought under this section for vio-
 11 lation of section 6(h), the court shall, in addition to any
 12 other remedies awarded to the prevailing plaintiff or plain-
 13 tiffs, allow expert fees as part of the costs. Any such action
 14 may be maintained as a class action as provided by the
 15 Federal Rules of Civil Procedure.”;

16 (2) in subsection (b), by striking “section
 17 15(a)(3)” each place it occurs and inserting “para-
 18 graphs (3), (6), and (7) of section 15(a)”;

19 (3) in the fourth sentence of subsection (b), by
 20 striking “No employees” and inserting “Except with
 21 respect to class actions brought under subsection (f),
 22 no employees”.

23 **SEC. 6. RECORDS.**

24 (a) **TECHNICAL AMENDMENT.**—Section 11(c) (29
 25 U.S.C. 211(c)) is amended by inserting “(1)” after “(c)”.

1 (b) RECORDS.—Section 11(c) (as amended by sub-
 2 section (a)) is further amended by adding at the end the
 3 following:

4 “(2)(A) Every employer subject to section 6(h) shall
 5 preserve records that document and support the method,
 6 system, calculations, and other bases used by the employer
 7 in establishing, adjusting, and determining the wage rates
 8 paid to the employees of the employer. Every employer
 9 subject to section 6(h) shall preserve such records for such
 10 periods of time, and shall make such reports from the
 11 records to the Equal Employment Opportunity Commis-
 12 sion, as shall be prescribed by the Equal Employment Op-
 13 portunity Commission by regulation or order as necessary
 14 or appropriate for the enforcement of the provisions of sec-
 15 tion 6(h) or any regulation promulgated pursuant to sec-
 16 tion 6(h).”.

17 (c) SMALL BUSINESS EXEMPTIONS.—Section 11(c)
 18 (as amended by subsections (a) and (b)) is further amend-
 19 ed by adding at the end the following:

20 “(B)(i) Every employer subject to section 6(h) that
 21 has 25 or more employees on any date during the first
 22 or second year after the effective date of this paragraph,
 23 or 15 or more employees on any date during any subse-
 24 quent year after such second year, shall, in accordance
 25 with regulations promulgated by the Equal Employment

1 Opportunity Commission under subparagraph (F), pre-
 2 pare and submit to the Equal Employment Opportunity
 3 Commission for the year involved a report signed by the
 4 president, treasurer, or corresponding principal officer, of
 5 the employer that includes information that discloses the
 6 wage rates paid to employees of the employer in each clas-
 7 sification, position, or job title, or to employees in other
 8 wage groups employed by the employer, including informa-
 9 tion with respect to the sex, race, and national origin of
 10 employees at each wage rate in each classification, posi-
 11 tion, job title, or other wage group.”.

12 (d) PROTECTION OF CONFIDENTIALITY.—Section
 13 11(c) (as amended by subsections (a) through (c)) is fur-
 14 ther amended by adding at the end the following:

15 “(ii) The rules and regulations promulgated by the
 16 Equal Employment Opportunity Commission under sub-
 17 paragraph (F), relating to the form of such a report, shall
 18 include requirements to protect the confidentiality of em-
 19 ployees, including a requirement that the report shall not
 20 contain the name of any individual employee.”.

21 (e) USE; INSPECTIONS; EXAMINATIONS; REGULA-
 22 TIONS.—Section 11(c) (as amended by subsections (a)
 23 through (d)) is further amended by adding at the end the
 24 following:

1 “(C) The Equal Employment Opportunity Commis-
2 sion may publish any information and data that the Equal
3 Employment Opportunity Commission obtains pursuant to
4 the provisions of subparagraph (B). The Equal Employ-
5 ment Opportunity Commission may use the information
6 and data for statistical and research purposes, and com-
7 pile and publish such studies, analyses, reports, and sur-
8 veys based on the information and data as the Equal Em-
9 ployment Opportunity Commission may consider appro-
10 priate.

11 “(D) In order to carry out the purposes of this Act,
12 the Equal Employment Opportunity Commission shall by
13 regulation make reasonable provision for the inspection
14 and examination by any person of the information and
15 data contained in any report submitted to the Equal Em-
16 ployment Opportunity Commission pursuant to subpara-
17 graph (B).

18 “(E) The Equal Employment Opportunity Commis-
19 sion shall by regulation provide for the furnishing of copies
20 of reports submitted to the Equal Employment Oppor-
21 tunity Commission pursuant to subparagraph (B) to any
22 person upon payment of a charge based upon the cost of
23 the service.

24 “(F) The Equal Employment Opportunity Commis-
25 sion shall issue rules and regulations prescribing the form

1 and content of reports required to be submitted under sub-
 2 paragraph (B) and such other reasonable rules and regu-
 3 lations as the Equal Employment Opportunity Commis-
 4 sion may find necessary to prevent the circumvention or
 5 evasion of such reporting requirements. In exercising the
 6 authority of the Equal Employment Opportunity Commis-
 7 sion under subparagraph (B), the Equal Employment Op-
 8 portunity Commission may prescribe by general rule sim-
 9 plified reports for employers for whom the Equal Employ-
 10 ment Opportunity Commission finds that because of the
 11 size of the employers a detailed report would be unduly
 12 burdensome.”.

13 **SEC. 7. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**
 14 **ANCE PROGRAM; REPORT TO CONGRESS.**

15 Section 4(d) (29 U.S.C. 204(d)) is amended by add-
 16 ing at the end the following:

17 “(4) The Equal Employment Opportunity Commis-
 18 sion shall conduct studies and provide information and
 19 technical assistance to employers, labor organizations, and
 20 the general public concerning effective means available to
 21 implement the provisions of section 6(h) prohibiting wage
 22 rate discrimination between employees performing work in
 23 equivalent jobs on the basis of sex, race, or national origin.
 24 Such studies, information, and technical assistance shall
 25 be based on and include reference to the objectives of such

1 section to eliminate such discrimination. In order to
2 achieve the objectives of such section, the Equal Employ-
3 ment Opportunity Commission shall carry on a continuing
4 program of research, education, and technical assistance
5 including—

6 “(A) conducting and promoting research with
7 the intent of developing means to expeditiously cor-
8 rect the wage rate differentials described in section
9 (6)(h);

10 “(B) publishing and otherwise making available
11 to employers, labor organizations, professional asso-
12 ciations, educational institutions, the various media
13 of communication, and the general public the find-
14 ings of studies and other materials for promoting
15 compliance with section 6(h);

16 “(C) sponsoring and assisting State and com-
17 munity informational and educational programs; and

18 “(D) providing technical assistance to employ-
19 ers, labor organizations, professional associations
20 and other interested persons on means of achieving
21 and maintaining compliance with the provisions of
22 section 6(h).

23 “(5) The report submitted biennially by the Secretary
24 to Congress under paragraph (1) shall include a separate

1 evaluation and appraisal regarding the implementation of
2 section 6(h).”.

3 **SEC. 8. CONFORMING AMENDMENTS.**

4 (a) CONGRESSIONAL EMPLOYEES.—

5 (1) APPLICATION.—Section 203(a)(1) of the
6 Congressional Accountability Act of 1995 (2 U.S.C.
7 1313(a)(1)) is amended—

8 (A) by striking “subsections (a)(1) and (d)
9 of section 6” and inserting “subsections (a)(1),
10 (d), and (h) of section 6”; and

11 (B) by striking “206 (a)(1) and (d)” and
12 inserting “206 (a)(1), (d), and (h)”.

13 (2) REMEDIES.—Section 203(b) of such Act (2
14 U.S.C. 1313(b)) is amended by inserting before the
15 period the following: “or, in an appropriate case,
16 under section 16(f) of such Act (29 U.S.C. 216(f))”.

17 (b) EXECUTIVE BRANCH EMPLOYEES.—

18 (1) APPLICATION.—Section 413(a)(1) of title 3,
19 United States Code, as added by section 2(a) of the
20 Presidential and Executive Office Accountability Act
21 (Public Law 104–331; 110 Stat. 4053), is amended
22 by striking “subsections (a)(1) and (d) of section 6”
23 and inserting “subsections (a)(1), (d), and (h) of
24 section 6”.

1 (2) REMEDIES.—Section 413(b) of such title is
2 amended by inserting before the period the fol-
3 lowing: “or, in an appropriate case, under section
4 16(f) of such Act”.

5 **SEC. 9. EFFECTIVE DATE.**

6 The amendments made by this Act shall take effect
7 1 year after the date of enactment of this Act.

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